

Celia Nogales  
Federal Regulatory Relations

1275 Pennsylvania Avenue, N.W., Suite 400  
Washington, D.C. 20004  
(202) 383-6423

PACIFIC  TELESIS  
Group - Washington

DOCKET FILE COPY ORIGINAL

RECEIVED

AUG 30 1993

August 30, 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

William F. Caton  
Acting Secretary  
Federal Communications Commission  
Mail Stop 1170  
1919 M Street, N.W. - Room 222  
Washington, D.C. 20554

Dear Mr. Caton:

Re: CC Docket No. 93-161, File No. E-89-85,  
Clark-Bader, Inc. d/b/a TMC Long Distance v.  
Pacific Bell

On behalf of Pacific Bell, please find enclosed an original and two copies of its "Opposition to Petition for Extraordinary Relief and Expedited Consideration" in the subject proceeding.

Please stamp and return the copy provided for that purpose to confirm your receipt. Please contact me at 202-383-6423 should you have any questions or require additional information concerning this matter.

Sincerely,

*Celia Nogales/WFA*

Enclosure

No. of Copies rec'd  
List A B C D E

041

DOCKET FILE COPY ORIGINAL  
Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

AUG 3 0 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Clark-Bader, Inc., d/b/a	)	
TMC Long Distance	)	
	)	
Complainant	)	CC Docket No. <u>93-161</u>
	)	
v.	)	
	)	
Pacific Bell	)	
	)	
Defendant	)	

To: Review Board

PACIFIC BELL OPPOSITION TO PETITION  
FOR EXTRAORDINARY RELIEF AND EXPEDITED CONSIDERATION

Pacific Bell opposes Complainant's Petition for Extraordinary Relief and Expedited Consideration since it fails to offer extraordinary grounds for relief, and, in addition, mischaracterizes the history of this case.

The Commission Rules require certain procedures with respect to appealing interlocutory orders. Section 1.301(b) provides that unless the presiding officer allows an appeal of an interlocutory order,<sup>1</sup> the remedy is to wait and raise it on review of the initial decision. While Complainant is evidently seeking a waiver of that rule, good cause has not been shown.<sup>2</sup>

---

<sup>1</sup> The Presiding Officer denied permission to appeal on August 10, 1993, FCC 93M-515.

<sup>2</sup> Throughout the Petition, Complainant refers to July 30, 1993 and August 3, 1993 "discussions" with the Judge. Despite Section 1.1208 of the Commission's Rules, counsel for Complainant did not make Pacific a party to these conversations.

Instead, Complainant has filed 26 pages of harangue directed at the unfairness of Pacific Bell in resisting discovery, the unfairness of the Common Carrier Bureau in delaying designating this case for hearing, the unfairness of the Presiding Officer in limiting discovery, and the unfairness of the Commission's Rules in not allowing immediate appeal of such interlocutory orders. Such bombast is typical of Complainant's approach in this case.

Pacific Bell prefers to examine the facts. Complainant filed this action in 1989. It sent a lengthy interrogatory and document request, which Pacific responded to by producing 4 volumes of documents. At a status conference, Complainant also requested depositions. While initially Complainant stated it would need 3 depositions, it revised its request to 28 people. At the Bureau's direction, Complainant eventually limited its request and deposed 11 Pacific Bell employees. Pacific Bell helped Complainant in this exercise by disclosing names, job titles and responsibilities for many jobs within the Company.

These depositions took place in August and September 1990. Immediately prior to the depositions, Complainant requested production of numerous documents it said it needed to shorten the expected length of depositions. In the interests of efficiency, and completely voluntarily, Pacific produced tens of thousands of documents in 3 locations. These documents were made available to Complainant 1 week after it asked for them.

After six months of silence, in April 1991, Complainant requested thousands more documents. Although many documents were not relevant and Pacific refused to make them available, Pacific did produce some additional documents at that time. Then, in 1992, Complainant sought 5 additional depositions. Pacific refused to produce the individuals voluntarily since no good cause existed for these depositions.

Pacific has therefore not "resisted" discovery. It has simply tried to be reasonable in responding to Complainant's overbroad requests.<sup>3</sup>

Complainant has not shown good cause for this waiver of the Commission's Rules. Should the Review Board decide to

---

<sup>3</sup> At a status conference with the Bureau, counsel for Complainant has even complimented the undersigned to the Bureau about Pacific's cooperative stance on discovery.

grant a waiver and hear this appeal, Pacific will engage in a point by point refutation of the "facts" stated by Complainant.

Respectfully submitted,

PACIFIC BELL  
NEVADA BELL

  
\_\_\_\_\_  
JAMES P. TUTHILL  
NANCY C. WOOLF

140 New Montgomery St., Rm. 1523  
San Francisco, California 94105  
(415) 542-7657

JAMES L. WURTZ

1275 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
(202) 383-6472

Their Attorneys

Date: August 27, 1993

# CERTIFICATE OF SERVICE

I, Michael Bickley, hereby certify that on this 30th day of August, 1993, I caused a true and correct copy of the foregoing "Opposition to Petition for Extraordinary Relief and Expedited Consideration" in CC Docket No. 93-161 to be sent to the following in the manner indicated:

Via Federal Express to:

Charles Helein, Esq.  
Galland, Kharasch, Morse &  
Garfinkle, P.C.  
Canal Square  
1054 31st Street, N.W.  
Washington, D.C. 20007-4492

and by hand delivery to:

Thomas D. Wyatt  
Chief, Formal Complaints  
and Investigations Branch  
Federal Communications Commission  
1250 - 23rd Street, N.W.  
Plaza Level  
Washington, D.C. 20037

The Honorable Walter C. Miller  
Administrative Law Judge  
Federal Communications Commission  
2000 L Street, N.W., Room 213  
Washington, D.C. 20036

Joseph A. Marino  
Chairman, Review Board  
Federal Communications Commission  
2000 L Street, N.W., Room 211  
Washington, D.C. 20036

Norman B. Blumenthal  
Member, Review Board  
Federal Communications Commission  
2000 L Street, N.W., Room 207  
Washington, D.C. 20036

Marjorie R. Greene  
Member, Review Board  
Federal Communications Commission  
2000 L Street, N.W., Room 204  
Washington, D.C. 20036

Michael R. Bickley  
Michael R. Bickley